83-607

No. .....

In The
Supreme Court of the United States
October Term, 1983

STATE OF IDAHO,
Petitioner,

vs.

DAVID ALLEN BRADLEY,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE IDAHO SUPREME COURT

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QUESTION PRESENTED

Whether police can enter a home to make an arrest based on their knowledge of an existing felony arrest warrant from another jurisdiction.

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OPINION BELOW

The opinion of the Idaho Supreme Court, not yet reported, appears as Appendix A beginning at page 1a.

JURISDICTION

The opinion of the Idaho Supreme Court was issued on September 1, 1983. A timely petition for rehearing on an unrelated issue was filed on September 21, 1983. This Court's jurisdiction is invoked under 28 U. S. C. § 1257(3). The judgment below is not based on an independent and adequate state ground because the Idaho Supreme Court has consistently relied upon interpretations of the Fourth

Amendment to the United States Constitution in interpreting art. I, § 17 of the Idaho Constitution.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourth Amendment to the United States Constitution provides:

> [Unreasonable searches and seizures.]—The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

Article I, § 17 of the Idaho Constitution provides:

> § 17. Unreasonable searches and seizures prohibited.—The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated; and no warrant shall issue without probable cause shown by affidavit, particularly describing the place to be searched and the person or thing to be seized.

Idaho Code § 19-4514(1) provides:

> 19-4514. Arrest without a warrant.—(1) The arrest of a person may be lawfully made by a peace officer without a warrant upon reasonable information that the accused stands charged with a felony by the courts of another state; but when so arrested, the accused must be taken forthwith before a judge or magistrate where he shall be advised of the reason for his arrest, his right to bond, his right of counsel, and his right against self-incrimination.

STATEMENT OF THE CASE

Ed Rankin, an investigator with the Idaho Department of Law Enforcement, Bureau of Narcotics, received a teletype message that the State of Oregon had an outstanding warrant charging David Allen Bradley with felony driving while suspended. Eight days later Investigator Rankin, accompanied by a second investigator, went to the home of David Allen Bradley to see if he was the David Bradley of the Oregon arrest warrant, and if so, to arrest him on the outstanding Oregon warrant. The investigators had neither a warrant nor a copy of the teletype message in their possession at the time they went to Bradley's apartment.

After knocking on the door of Bradley's apartment, Investigator Rankin identified himself and his partner as policemen, and told Bradley they were there to find out if he was the David Bradley who was wanted on the Oregon warrant. After it was confirmed that Bradley was in fact the individual wanted on the Oregon warrant, Bradley was arrested. During the course of Bradley's arrest, Investigator Rankin observed a plate containing ground green vegetable matter on the drain board next to the sink. After being given his Miranda rights, Bradley informed the investigators of hashish in the freezer and more marijuana elsewhere in the residence. A search warrant was subsequently obtained, Bradley's residence was searched, and controlled substances were found.

A complaint was filed charging Bradley with possession of a controlled substance with the intent to deliver. Counsel for Bradley filed with the magistrate's division of the district court a Motion to Dismiss and to Exclude on

the basis that the search was in violation of the Fourth Amendment of the United States Constitution, art. I, § 17 of the Idaho Constitution, and Rule 41 of the Idaho Criminal Rules. (Appendix E, pp. 27a-29a). This motion was denied by the magistrate who specifically found that (1) under Rule 4(h)(3) of the Idaho Rules of Criminal Procedure, it was not necessary for the arresting officer to have the warrant in his possession at the time the defendant was arrested, and (2) once the defendant was arrested and the officer was legally inside the premises, he observed the contraband substance in plain sight. (Appendix D, pp. 23a-26a).

After entering a plea of not guilty to the charge, Bradley filed a Motion to Suppress in the district court, contending that the search was in violation of the Fourth and Fifth Amendments to the United States Constitution, and in violation of the Idaho Constitution. (Appendix C, pp. 21a-22a). The district court granted Bradley's Motion to Suppress. In its seven-page Memorandum and Order, the court held, among other things, that the arrest of Bradley was invalid because the investigators arrested Bradley on the basis of a teletype received from the State of Oregon and not under the authority of an arrest warrant. (Appendix B, pp. 13a-20a).

The State of Idaho appealed to the Idaho Supreme Court from the decision of the district court granting Bradley's Motion to Dismiss. The Idaho Supreme Court, in a three-two decision, affirmed the district court's order suppressing the evidence. (Appendix A, pp. 1a-12a). On the basis of *Payton v. New York*, 445 U. S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980), and the principle that a warrant from one state has no force or validity outside the

boundaries of that state, the court stated that an arrest warrant issued in Oregon will not authorize police officers to cross a private Idaho threshold. After a discussion of the applicable Idaho statute governing arrest, the court held:

> The district court properly applied the controlling Idaho statutes, and in a manner comporting with the holding of Payton. The entry into the defendant's residence was in violation of the Fourth Amendment of the Constitution of the United States and equally in violation of Art. 1, § 17 of the Idaho Constitution.

State v. Bradley, Idaho Supreme Court #14292 (September 1, 1983) slip op. at 7. (Appendix A, pp. 1a-12a).

REASONS FOR GRANTING THE WRIT

The State of Idaho submits that the Idaho Supreme Court has decided a federal question in a way which conflicts with *Payton v. New York,* 445 U. S. 573, 100 S. Ct. 1371, 63 L. Ed 2d 639 (1980), the applicable decision of the United States Supreme Court, and in a way which conflicts with *People v. Walgemuth,* 370 N. E. 2d 1067, 69 Ill. 2d 154, 13 Ill. Dec. 40 (1977), a decision of the Illinois Supreme Court. Additionally, the Idaho Supreme Court has held that Idaho Code § 19-4514 is unconstitutional as it is applied to an arrest in the home.

The Idaho Supreme Court held that knowledge of an existing felony warrant from another state is not sufficient authority on which to make an arrest in the home. The United States Supreme Court in *Payton v. New York,* 445 U. S. 573, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980), held

that an arrest warrant was required to enter the home for the purpose of executing an arrest. The requirement of a warrant is to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. The State of Idaho submits that *Payton* does not require that the magistrate issuing the warrant be a magistrate from the state in which the arrest is actually executed.

The Illinois Supreme Court in *People v. Walgemuth*, 370 N. E. 2d 1067, 69 Ill. 2d 154, 13 Ill. Dec. 40 (1977), *cert. denied* 436 U. S. 908, held that an arrest based upon an arrest warrant issued in another state is not in violation of the Fourth Amendment of the United States Constitution.

Idaho Code § 19-4514(1) authorizes the arrest of a person, without a warrant, when the peace officer executing the arrest has reasonable information that the person stands charged with a felony by the courts of another state. The Idaho Supreme Court has held such an arrest to be in violation of the Fourth Amendment of the United States Constitution if it is executed in the person's home.

These conflicts justify the grant of certiorari to review the judgment below.

DATED this 7th day of October, 1983.

Respectfully submitted,

/s/ Myrna A. I. Stahman
Deputy Attorney General

State of Idaho
Statehouse, Boise, ID 83720

Attorney for Petitioner

APPENDIX A

1983 OPINION NO. 121

IN THE SUPREME COURT OF THE STATE OF IDAHO

NO. 14292

Pocatello March 1983 Term

STATE OF IDAHO,

Plaintiff-Appellant,

vs.

DAVID ALLEN BRADLEY,

Defendant-Respondent.

(Filed September 1, 1983)

Frederick C. Lyon, Clerk

Appeal from the District Court of the Sixth Judicial District of the State of Idaho, Bannock County. Honorable Arthur P. Oliver, District Judge.

Appeal from an order granting defendant's motion to suppress evidence. Order *affirmed.*

Jim Jones, Attorney General, Lynn E. Thomas, Solicitor General, and Myrna A. I. Stahman, Deputy Attorney General, Boise, attorneys for appellant. Ms. Stahman argued.

M. Jay Meyers, Pocatello, attorney for respondent.

BISTLINE, J.

The State of Idaho appeals a district court order suppressing evidence obtained by the State as a result of the arrest of David Bradley in his Pocatello, Idaho, apartment on January 9, 1981. We affirm the district court order.

Bradley for some time had been under surveillance by the Idaho State Bureau of Narcotics on suspicion of drug trafficking. During the course of the investigation, Ed Rankin, a narcotics investigator, made a record check with the State of Oregon regarding Bradley. On January 1, 1981, he received a teletype from Oregon stating that there was a bench warrant issued in that state for Bradley's arrest for the felony of driving while his license was suspended. Eight days later on January 9, 1981, Officer Rankin and a second officer, Kim Peiper, went to Bradley's apartment for the stated purpose, as they would later contend, of determining whether he was the David Bradley wanted in Oregon. The officers had no Idaho arrest warrant and had not applied for one, nor did they have a copy of the Oregon warrant; all they possessed was the copy of the aforesaid teletype message.

Rankin knocked on Bradley's door and identified himself as a police officer. On conflicting evidence the trial court found that the officers entered Bradley's apartment without written or oral consent.[1] Once inside Bradley's apartment, the officers ran an NCIC check on Bradley and then placed him under arrest for the reported Oregon traffic offense. Bradley was then given his *Miranda* rights.

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[1]Both Bradley and Ella Robinson, a friend of Bradley's who was in his apartment at the time of the arrest, testified that Bradley stated to the officers that he would come outside and talk to them but that the officers pushed their way past Bradley and into the apartment. Officers Rankin and Peiper, however, testified that Bradley backed away and stepped aside from the door, allowing the officers to enter the premises. The trial court found that, "[t]he state's evidence, at best, shows only an acquiescence on the part of the defendant and not consent." R., p. 91.

During the course of the arrest inside Bradley's apartment, Officer Rankin observed next to the kitchen sink, a plate containing green vegetable matter which was later identified as marijuana. Bradley subsequently made inculpatory statements regarding the location of other contraband on the premises; he was then taken to the Bannock County Jail and booked.

The investigators then sought a warrant to search Bradley's apartment which was supported by recitation of the contraband observed by the officers and the inculpatory statements made by Bradley at the time of his arrest. The warrant was issued; in executing it the officers seized additional contraband, and they then obtained an Idaho warrant for Bradley's arrest on a complaint charging possession of a controlled substance with intent to deliver. Bradley, already incarcerated on the basis of the Oregon teletype message, was readily arrested on the Idaho warrant. Oregon not only declined to extradite Bradley, but did not furnish the Idaho authorities with a certified copy of the Oregon warrant.

Suppression was sought upon alleged violation of the Constitutions of the United States and the State of Idaho. The prosecutor urged upon the trial judge that the entry was lawful under the provisions of I. C. § 19-4514.

The district court judge, the Honorable Arthur P. Oliver, in his written order stated: "It is one thing to permit the warrantless arrest of the defendant in a public place, but quite another to enter the defendant's residence, absent exigent circumstances, without a warrant and without consent." R., p. 89. Because the intrusion into defendant's home was invalid, the court held that the plain

view doctrine was inapplicable. The court further held that the inculpatory statements made by Bradley subsequent to his arrest following unlawful entry were tainted and could not properly be used as a basis for obtaining the search warrant, precluding utilization of the evidence obtained as a result of the ensuing search.

The State contends that Idaho peace officers may lawfully enter into a person's dwelling, without his consent and in the absence of exigent circumstances, for the purpose of making an arrest on the basis of mere knowledge of an outstanding felony warrant from another state. We do not agree.

The United States Supreme Court in Payton v. New York, 445 U. S. 573, 577, 10 S. Ct. 1371, —, 63 L. Ed. 2d 639, — (1980), held unconstitutional New York statutes which authorized police officers to enter private residences without warrants and, if necessary, with force, in order to make routine felony arrests. In *Payton*, the Court ruled that the Fourth Amendment prohibits "the police from making a warrantless and nonconsensual entry into a suspect's home in order to make a routine felony arrest," *Id.* at 577, 100 S. Ct. at 1375, approving therein the language of the Second Circuit Court of Appeals:

> " 'To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present.' "

Id. at 588-89, 100 S. Ct. at 1381 (quoting United States v. Reed, 571 F. 2d 412, 423 (1978), *cert. denied, sub*

nom. Goldsmith v. United States, 439 U.S. 913, 99 S. Ct. 283, 58 L. Ed. 2d 259).

The State contends that the entry into Bradley's apartment does not fall within the gambit of this rule because the officers possessed knowledge of an outstanding Oregon warrant for Bradley's arrest. The State argues that "once a judicial officer's determination of probable cause has been interposed between the zealous officer and the citizen, and a bench warrant has been issued, the requirements of the Fourth Amendment of the United States Constitution have been met." State's Brief, p. 12. The State sees no reason that the "judicial officer" need be an Idaho judge or magistrate.

However, it is a well-established principle of law that a warrant from one state has no force or validity outside the boundaries of that state. Street v. Cherba, 662 F. 2d 1037 (4th Cir. 1981); State v. Everett, 520 P. 2d 301 (Ariz. 1974), *cert. denied,* 419 U.S. 880 (1974); People v. Coto, 611 P. 2d 969 (Colo. 1980). *See* Am. Jur. 2d Arrest § 66 (1969) and cases cited at note 18 therein.

People v. Coto is virtually identical. In that case, Colorado officers from the Organized Crime Strike Force were investigating a Michael Coto. The officers learned that a warrant had been issued in Florida for a Michael Coto's arrest. The officers went to the Coto residence, without a Colorado arrest warrant, but with knowledge of the Florida warrant, and entered the Coto residence absent consent or exigent circumstances. While in the Coto residence, the officers discovered a small quantity of marijuana and several large bales of the type used to transport marijuana. A search warrant was then procured by one

of the officers. A subsequent search resulted in the seizure of two hundred pounds of marijuana. Thereafter, charges were filed against Coto for the unlawful possession of a dangerous drug with intent to dispense. The Colorado Supreme Court held that:

> "In this case, the Florida warrant, relied upon by the prosecution, has no effect in this state except to provide the probable cause needed to make an arrest of the defendant. . . . Although probable cause may be sufficient to justify a warrantless arrest, . . . it is not sufficient under *Payton v. New York, supra* and *People v. Moreno, supra,* [176 Colo. 488, 491 P. 2d 575 (1971)] *to justify a warrantless entry into the defendants' premises in the absence of exigent circumstances* extant and therefore the officers had no authority to enter the premises."
>
> "Accordingly, since the officers were not legitimately on the premises, the contraband discovered in a closet in plain view must be suppressed. In addition, evidence seized pursuant to the resulting search warrant, which was issued on the basis of the illegal entry, must be suppressed."
>
> 611 P. 2d at 970-71 (citations omitted) (emphasis added).

Similarly, an arrest warrant issued in Oregon will not authorize police officers to cross a private Idaho threshold. There being no consent and no exigent circumstances,[2] the entry was no more lawful than the *Coto* entry.

To support its contention that a police officer may lawfully make an arrest on the basis of transmitted in-

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[2]The State makes no contention that there were exigent circumstances. The State had eight days in which to have obtained an Idaho warrant for Bradley's arrest pursuant to I. C. § 19-4513.

formation of an outstanding arrest warrant, the State cites Whitely v. Warden of Wyoming State Penitentiary, 401 U. S. 560, 91 S. Ct. 1031 (1971); Weeks v. Estelle, 509 F. 2d 760 (5th Cir. 1975) *cert. denied* 423 U. S. 872, 96 S. Ct. 139 (1975); United States v. McCray, 468 F. 2d 446 (10th Cir. 1972); Bandy v. Willingham, 398 F. 2d 333 (10th Cir. 1968) *cert. denied* 393 U. S. 1006, 89 S. Ct. 497 (1968); State v. Crawford, 99 Idaho 87, 577 P. 2d 1135 (1978); State v. Deschamps, 94 Idaho 612, 495 P. 2d 18 (1971) *cert. denied* 405 U. S. 1040, 92 S. Ct. 1310 (1972); and State v. Polson, 81 Idaho 147, 339 P. 2d 410 (1959). None of these authorities purport to stand for the proposition that a warrant is not required to invade the sanctity and privacy extant in a person's dwelling. On the contrary, each case involves situations where transmitted information was said to afford probable cause for the stop and arrest of persons traveling in automobiles.

The State additionally contends that the warrantless entry into Bradley's residence and his ensuing arrest was sanctioned by I. C. § 19-4514, which provides in part that:

> "(1) The arrest of a person may be lawfully made by a peace officer *without a warrant* upon reasonable information that the accused stands charged with a felony by the courts of another state; . . . ." (Emphasis added.)

Prior to *Payton* the State's argument might [sic] been seen as having some validity. Since *Payton* the statute, while it might support a warrantless arrest in a public place, will not support a warrantless entry into a defendant's private residence in order to make an arrest.

I. C. § 19-4513 enacted at the same time as I. C. § 19-4514, provides the procedure for obtaining an Idaho war-

rant to arrest a person who stands charged with a felony in another state:

> "(1) Any judge or magistrate of the state of Idaho shall issue a warrant directing any peace officer to arrest the person named in said warrant . . . provided that:
>
> > "(a) A peace officer of this state shall submit an affidavit that the person named in the warrant has absented himself from a sister state having been charged with a felony, *together with a certified copy of the complaint and warrant of arrest issued by a court of record in a sister state* to the court in support of issuance of the warrant; . . . ."

The district court properly applied the controlling Idaho statutes, and in a manner comporting with the holding of Payton.[3] The entry into the defendant's residence was in violation of the Fourth Amendment of the Constitution of the United States and equally in violation of Art. 1, § 17 of the Idaho Constitution. Accordingly, the order appealed from is

Affirmed. Costs awarded to respondent.

DONALDSON, C. J., and HUNTLEY, J., concur.

BAKES, J., dissenting:

The issue posed in this case is: does an arrest in a private home, pursuant to an officer's knowledge of an out-of-state warrant for the occupant's arrest, violate *federal*

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[3]Given our holding in this case, we need not address defendant's allegation that the suppression order should be upheld because his arrest on the Oregon felony driving while suspended charge was merely a pretext for discovering evidence to support another charge.

constitutional standards?[1] The majority answers the question in the affirmative, but bases that answer on state law principles. Since this country, under federalism, is one united territory, federal constitutional standards cannot be based upon state law principles. If they were so based, fifty different standards would exist, and there would no longer be a "federal" constitutional requirement.

The fallacy of the majority's argument can easily be shown by an example. In this case, the warrant was issued in Oregon. If the defendant had lived in Ontario, Oregon, and police, with knowledge of the warrant issued in another part of the state, had proceeded to arrest the defendant in his own home, would his federal constitutional rights have been violated? Of course not. Payton v. New York, 445 U. S. 573, 100 S. Ct. 1371 (1980), relied upon by the majority opinion, is clear on that point. Why, then, once the scene is set across a *state* border, does there suddenly appear to be a violation of federal constitutional principles? In a situation such as this, I cannot see how a federal standard can be violated merely by crossing a state line. The majority's finding of a violation of the fourth amendment to the United States Constitution is unjustified.

The precise question involved in this case is whether the police can enter a home to make an arrest based on their knowledge of an existing felony warrant from an-

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[1]The majority, with no analysis accompanying its decision, has also ruled that the actions in this case violated the state Constitution. The federal constitutional requirement of a warrant is a strict requirement, and there should be no reason to require a stricter standard under our state Constitution than that required under the federal Constitution.

other jurisdiction. In Payton v. New York, cited by the majority, the United States Supreme Court held that officers could not enter a person's home to make an arrest *without a warrant,* absent consent or exigent circumstances. In *Payton* the court adopted the reasoning of the Second Circuit in United States v. Reed, 572 F. 2d 412 (2d Cir. 1978), *cert. denied* 439 U. S. 913:

> "To be arrested in the home involves not only the invasion attendant to all arrests but also an invasion of the sanctity of the home. This is simply too substantial an invasion to allow without a warrant, at least in the absence of exigent circumstances, even when it is accomplished under statutory authority and when probable cause is clearly present." 572 F. 2d at 423.

Thus, the concern of the court in *Payton* was the invasion of the sanctity of the home without the safeguards inherent in the issuance of a warrant by a neutral, detached magistrate. As the United States Supreme Court stated in *Payton*:

> "It is true that an arrest warrant requirement may afford less protection than a search warrant requirement, but it will suffice to interpose the magistrate's determination of probable cause between the zealous officer and the citizen. If there is sufficient evidence of a citizen's participation in a felony to persuade a judicial officer that his arrest is justified, it is constitutionally reasonable to require him to open his doors to the officers of the law." 445 U. S. at 603, 100 S. Ct. at 1388.

The above quote reveals the major concern of the court in *Payton*. For the protection of constitutional rights, the court wanted participation by a judicial officer in the process leading to a defendant's arrest in his

home. In the present case, a warrant had been issued, and thus a judicial officer had participated in the events leading up to the defendant's arrest. Thus, the underlying concern of the court in *Payton* was satisfied. The *Payton* court, if it were faced with a situation such as this, would no doubt find that no fourth amendment rights had been violated. Their concern, that of a *warrantless* entry into a private home, is not present here.

It is a fundamental premise of law that once a warrant has been issued, the arresting officer need not have possession of the warrant when making the arrest. United States v. West, 517 F. 2d 483 (8th Cir. 1975), *cert. denied* 423 U. S. 948; United States v. Holland, 438 F. 2d 887 (6th Cir. 1971); Barker v. United States, 412 F. 2d 775 (5th Cir. 1969); United States v. Salliey, 360 F. 2d 699 (4th Cir. 1966). This is true regardless of where the warrant itself is issued. United States v. Jones, 696 F. 2d 479 (7th Cir. 1982), *cert. denied* — U. S. —, 103 S. Ct. 2453 (1983) (arrests made in Indiana based on officer's knowledge of warrants issued in Illinois); Bandy v. Willingham, 398 F. 2d 333 (10th Cir. 1968), *cert. denied* 393 U. S. 1006 (arrest in North Dakota validly based on outstanding Idaho warrant); United States v. Tillery, 332 F. Supp. 217 (E. D. Pa. 1971) *aff'd* 468 F. 2d 381 (arrest in Pennsylvania based on warrant issued in District of Columbia).

A perfect example of a case where a state court properly applied federal constitutional principles is People v. Wolgemuth, 370 N. E. 2d 1067 (Ill. 1977), *cert. denied* 436 U. S. 908. In that case, a court in Iowa had issued an arrest warrant for the defendant. Officers in Illinois received information of the defendant's whereabouts. They

proceeded to a private apartment in Illinois and arrested him based on their knowledge of the warrant issued in Iowa. The Illinois Supreme Court, faced with the same argument we are presented with here, made the following comments:

> "The fact that an arrest warrant had been issued distinguishes this case from that in which police execute a *warrantless* entry of a suspect's home. The primary function of the warrant requirement of the fourth amendment is to interpose prior to an arrest a neutral magistrate's review of the factual justification for the charges. . . . This serves to relieve police officers, 'engaged in the often competitive enterprise of ferreting out crime,' of the responsibility of drawing neutral and sober inferences regarding a suspect's criminality. . . . It is this division of responsibility which militates against 'the dangers of unlimited and unreasonable arrests of persons who are not at the moment committing any crime.' . . . The warrant requirement of the fourth amendment is not frustrated in this case by the distinctive fact that the arrest warrant was issued in a State other than that in which it was executed. Whether a valid foreign warrant is effective in Illinois is a matter of State, not constitutional, law. A suspect's constitutional right to have a neutral magistrate determine whether probable cause exists for his arrest is not undermined by Illinois' choice to extend comity to the determination of a magistrate from another State. The entry of the police into defendant's home was, therefore, properly executed pursuant to a valid Iowa warrant for the defendant's arrest." *Id.* at 1070.

The argument made by the Illinois Supreme Court is peculiarly applicable to the present case. That reasoning should be followed in this case, where the facts are substantially similar.

SHEPARD, J., concurs.

APPENDIX B

IN THE DISTRICT COURT OF THE
SIXTH JUDICIAL DISTRICT
OF THE STATE OF IDAHO,
IN AND FOR THE COUNTY OF BANNOCK

Register #C-2737

STATE OF IDAHO,

Plaintiff,

-vs-

DAVID ALLEN BRADLEY,

Defendant.

MEMORANDUM & ORDER

(Filed July 20, 1981)

The above entitled matter is before the Court on defendant's Motion to Suppress. At the hearing on said Motion, defendant appeared in person and with counsel, M. Jay Meyers. Garth S. Pincock, Prosecuting Attorney, appeared on behalf of the State of Idaho. Oral and documentary evidence was received and the matter taken under advisement. Subsequent thereto the Court issued a Memorandum requesting that the respective counsel brief for the Court certain questions which were set out in the Memorandum. The briefs have been received and the Court wishes to compliment counsel on the quality of their exhaustive briefs. The questions posed by the Court were as follows:

1. Was the arrest under Sec. 19-4514 I.C. valid under the circumstances?

2. Was the information obtained as a result of that arrest valid for use in filing subsequent charges?

3. Were the statements made by defendant subsequent to the arrest and subsequent to having been given the Miranda warning, sufficient as the basis for the issuance of a Search Warrant regardless of the validity or invalidity of the arrest?

On January 10, 1980 two state narcotics agents entered the premises of the defendant and placed him under arrest for a felony traffic offense committed in the State of Oregon. The agents were not acting under the authority of an arrest warrant, but rather on the basis of a teletype received from the State of Oregon (Exhibit B). After entering defendant's residence, the agents observed what appeared to be marijuana and paraphernalia in plain view on a table in an adjacent room. Defendant was given his Miranda warning, but subsequently he made certain inculpatory statements regarding the location of other contraband on the premises. On the basis of the contraband observed by the agents and the inculpatory statements of defendant, the agents procured a warrant for the search of defendant's residence. As a result of that search, additional contraband was seized and an arrest warrant was obtained for defendant for possession of a controlled substance with intent to deliver. He was served with and arrested as a result of this warrant while incarcerated for the Oregon traffic offense. The oral evidence at the suppression hearing supports the conclusion that the arrest on the Oregon traffic warrant was a mere pretext to gain entry to defendant's residence in hopes of obtaining evidence of a drug related activity. Here nar-

cotics agents instituted the inquiry which produced the information regarding the Oregon offense. They proceeded to arrest the defendant under the authority of the extradition statute, even when the information they had obtained posed doubt as to whether the offense was extradictable. A nine (9) day period elapsed between the time the information was received from Oregon and the time the arrest was made. It seems almost incredulous that specialized narcotics investigators would be serving as general police officers in arresting fugitives from traffic offenses in another state. Any doubt as to the true motivation of the agents was dispelled when one of the agent's admitted in an answer to a question posed by the Court that the agents "had reason to believe" that defendant was involved in drug related activities.

The above recitation raises the consideration of the roll an officer's subjective or objective motivation plays in effecting an arrest which results in the seizure of contraband in plain view. The Court recognizes a line of cases wherein the subjective motivation of the officer proved to be that of conducting an otherwise illegal search, then the arrest itself and the resultant search were considered illegal and the evidence suppressed. The Court further recognizes that more recent cases have downplayed the role of motivation and have applied an "objective" standard, stating that the motivation of an officer in and of itself is irrelevant. Under the present factual situation, the Court could determine that the conduct of the officers viewed objectively resulted in a legal arrest.

However, the Court need not make this determination until it first determines whether the officers had valid

consent to enter the premises. If not, the arrest would be illegal under either subjective or objective approaches. While Sec. 19-4514 I.C. permits the arrest of one charged with committing a felony in another state upon reasonable information, said statute cannot, however, be construed in a manner which would contravene the defendant's 4th Amendment rights. It is one thing to permit the warrantless arrest of the defendant in a public place, but quite another to enter the defendant's residence, absent exigent circumstances, without a warrant and without consent. The latter action was expressly proscribed in the recent case of *Payton vs. New York,* 445 US 573, 63 L. Ed. 2d 639 (1980). Therein it was held:

> "In terms that apply equally to seizures of property and to seizures of persons, the Fourth Amendment has drawn a firm line at the entrance to the house. Absent exigent circumstances, that threshold may not reasonably be crossed without a warrant." 63 L. Ed. 2d at 653.

Thus, if the agents in this case entered the defendant's residence without permission, the State can find no sanctuary in I.C. Sec. 19-4514.

Given the holding in *Payton, supra,* the same standard employed to determine whether voluntary consent to search has been given must now be applied in cases such as this where the state alleges consent to enter in order to effect an arrest, but possesses no warrant of arrest.

> "(T)he question whether a consent to a search was in fact "voluntary" or was the product of duress or coercion, express or implied, is a question of fact to be determined from the totality of the circumstances.

• • • •

> But the Fourth and Fourteenth Amendments require that a consent not be coerced, by explicit or implicit means, by implied threat or covert force. For, no matter how subtly the coercion were applied, the resulting "consent" would be no more than a pretext for the unjustified police intrusion against which the Fourth Amendment is directed." *Schneckloth vs. Bustamonte,* 412 US 218, 36 L. Ed. 2d 854 (1973).

The state bears the burden of proving that consent was voluntarily given, *Schneckloth, supra,* and

> "(t)his burden cannot be discharged by showing no more than acquiescence to a claim of lawful authority." *Bumper v. North Carolina,* 391 US 543, 20 L. Ed. 2d 797 (1968).

The evidence in the instant case is in conflict. Defendant and his witness both testified to the effect that the agents forced their way through the doorway and into the defendant's premises. The state's witnesses indicated that the defendant backed away and stepped aside allowing the agents to enter the premises. The state's evidence, at best, shows only an acquiescence on the part of the defendant and not consent. The state has the burden of proving consent. Under the authorities above quoted and the facts as testified to, this Court finds as a matter of fact and holds as a matter of law that the state has not borne the burden of proving defendant's consent to the agents' entry.

The evidence obtained under the "plain view" doctrine can only be admissible if, in fact, the contraband was, in fact, in plain view and secondly and most importantly, that the intrusion onto defendant's premises was valid. In the present case, the agents admitted that they hoped to find

incriminating evidence on defendant's premises, thus there is a question as to whether or not their observations fall within the plain view doctrine. However, the Court need not reach this issue since it has already determined that the arrest of defendant was invalid, making the plain view doctrine inapplicable.

The remaining question is whether the inculpatory statements made by defendant after his arrest can provide the basis for a search warrant, notwithstanding the invalidity of his arrest? The answer to this question necessitates an inquiry into the relationship between the official misconduct and the voluntary nature of the defendant's statements.

> "Although in situations involving consent, voluntariness is not examined in light of the fifth amendment, as it is in confession cases, such a distinction is beside the point. What is of concern is whether some inculpatory action by an arrestee, albeit voluntary, was obtained by the exploitation of an illegal arrest by a police officer, which as a consequence violates the constitutional safeguards of the fourth amendment so as to require application of the exclusionary rule. The inculpatory action on the part of the arrestee can take the form of a consent to search just as easily as it can a confession, and for purposes of the fourth amendment there is no substantive difference between the two. We see no reason why *Brown* (*Brown v. Illinois*, 422 U.S. 590, 45 L.Ed. 2d 416 (1975)) and its progeny should not be extended to include cases such as this involving a voluntary consent to search given after an illegal arrest. (citation omitted.) Therefore,

> the question before us is whether Odom's consent was obtained by the exploitation of an illegal arrest or "by

means sufficiently distinguishable to be purged of the primary taint." *Brown, supra,* quoting *Wong S Sun v. United States,* 371 U. S. 471, 9 L. Ed. 2d 441 (1963).

In *Brown,* the Supreme Court identified a number of factors to be considered in determining whether a voluntary confession was tainted by an illegal arrest. These factors are the giving of the *Miranda* warnings; the temporal proximity of the arrest and the confession; the presence of intervening circumstances, if any, and particularly the purpose and flagrancy of the official misconduct." *People v. Odom,* 404 N. E. 2d 997 (Ill. 1980).

Applying the *Odom-Brown* test to the facts of the case at hand, it does not appear that the defendant's inculpatory statements could support a valid search of his residence subsequent to his arrest on the traffic offense. Only one element of the test was satisfied; he was given the Miranda warnings. The "confession" was made shortly after the arrest; there were no apparent intervening circumstances which would purge the unlawful entry of its primary taint. There is no doubt in the Court's mind that in this case the inculpatory statements resulted from an exploitation of an illegal arrest—thus the evidence seized as a result of those statements is tainted and a part of the "fruit of the poisonous tree."

NOW, THEREFORE, IT IS HEREBY ORDERED that defendant's Motion to Suppress, be and the same is hereby granted and that the evidence sought to be suppressed, be and is hereby ordered suppressed.

DATED this 20 day of July, 1981.

/s/ Arthur P. Oliver
District Judge

MEMORANDUM AND ORDER - 7/20/81

Copies to: Garth S. Pincock
M. Jay Meyers
Steve Larsen - Law Clerk

G. Neil Anderson, Clerk Dist. Court

By /s/ Rhoda Bennett
Deputy Clerk

APPENDIX C

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Attorneys for: Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

Case No. C-2737

STATE OF IDAHO,

Plaintiff,

vs.

DAVID ALLEN BRADLEY,

Defendant.

MOTION TO SUPPRESS

(Filed March 25, 1981)

COMES NOW David Allen Bradley, the Defendant above named, by and through his Attorney, M. Jay Meyers, of the firm of McDevitt, McDevitt, Meyers & White, and moves this Honorable Court to suppress all evidence gained by means of a search of Defendant's residence, for the following reasons:

1. The search was without warrant and without authority;

2. The search was unreasonable;

3. The Defendant's consent to said search was obtained through coercion and was therefore not free and voluntary;

4. The Defendant's arrest was without the benefit of arrest warrant and therefore illegal.

5. The Defendant's identification and subsequent check were violations of his right to privacy.

6. The grounds heretofore enumerated make such search violative of Amendments Four and Five of the United States Constitution and of the Idaho State Constitution. Defendant incorporates by reference the transcript of the Preliminary Hearing held on the 27th day of January, 1981, to be filed in the above-entitled matter.

DATED this 24 day of March, 1981.

McDevitt, McDevitt, Meyers & White
Attorneys for Defendant
By: /s/ M. Jay Meyers

DEFENDANT REQUESTS AN EVIDENTIARY HEARING.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing MOTION TO SUPPRESS was hand-delivered, this 24 day of March, 1981, to the Office of the Bannock County Prosecuting Attorney, at the Bannock County Courthouse, Pocatello, Idaho 83201.

/s/ Marsha Neidecker
Secretary to M. Jay Meyers

MOTION TO SUPPRESS (DEFENDANT'S)

APPENDIX D

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

MAGISTRATES DIVISION

C-2737

STATE OF IDAHO,

Plaintiff,

vs.

DAVID ALLEN BRADLEY,

Defendant.

MINUTE ENTRY & ORDER
Register #F-130585LE

(Filed March 6, 1981)

The Preliminary Examination in the above-entitled matter came on for hearing on the 27th day of January, 1981, before the HONORABLE ROBERT W. BENNETT, Judge, Sixth District Magistrate's Division. The State of Idaho was represented by Garth S. Pincock, Bannock County Prosecuting Attorney. The Defendant appeared in person and with counsel, M. Jay Meyers.

On February 20, 1981, the final brief was received from counsel for the Defendant.

Counsel for the Defendant moved to dismiss on the grounds that there was an unreasonable delay in the arraignment of the Defendant and secondly, on the grounds

that the arrest of the Defendant was illegal, therefore the evidence and testimony should be suppressed and the complaint dismissed.

Ed Rankin was at all times pertinent to the above cause a full-time agent for the Department of Law Enforcement, Bureau of Narcotics. That at all times hereinafter pertinent, there were two (2) persons named David Bradley in the City of Pocatello, County of Bannock, State of Idaho. For whatever reason, Ed Rankin knew and had knowledge of a warrant of arrest from the State of Oregon for one David Allen Bradley. On the 9th day of January, 1981, Ed Rankin went to 1158 Freeman Lane, Apartment #A to make the arrest on the N.C.I.C. out of the State of Oregon. That the response to the knock on the door by the officer was by one who identified himself as David Allen Bradley; that Mr. Rankin identified himself as an officer of the State of Idaho and his purpose for being there. Mr. Bradley was then advised that he was under arrest. Mr. Rankin asked if he could enter the house to observe the identification produced by Mr. Bradley. That in plain sight Mr. Rankin observed a contraband substance in the kitchen. That he gave Mr. Bradley his miranda warning and Mr. Bradley volunteered the information that there was other contraband in the refrigerator and elsewhere in the residence. The residence was secured by leaving it under observation and a search warrant was later obtained where State's Exhibits #1, #4, #5 and #6 were seized. The Defendant was not arraigned until approximately 1:00 p.m. on the Monday following the Defendant's arrest.

MINUTE ENTRY AND ORDER - 3/5/81

From the facts presented the Court is of the opinion that there was no unnecessary delay in bringing the Defendant before a Magistrate for arraignment. See Idaho Rules of Criminal Procedure 5(b). The Court is mindful of the decisions which have stated that the Idaho Rule of Criminal Procedure 5(b) would be controlling over Idaho Code 19-514.

Turning next to the question of whether or not the evidence should be suppressed and the complaint dismissed on the grounds of an illegal arrest, the Court finds that the Motion to Dismiss should be denied and that the evidence be admitted. Under Idaho Rules of Criminal Procedure 4(h)(3), it was not necessary for the arresting officer to have the warrant in his possession at the time that the Defendant was arrested. It might have been unusual for a narcotics agent to be serving the warrant, but there was nothing to indicate that he did not have such authority or any ulterior motive of the arresting officer. Once the Defendant was in custody through a lawful arrest and the officer was legally and lawfully inside the premises, he observed the contraband substance in plain sight. Thereafter, the Defendant volunteered the information that there was additional contraband on the premises. At this time, the officer left the premises and obtained a search warrant which resulted in the seizure of the exhibits offered into evidence by the State at the preliminary hearing.

There is nothing to indicate that the Defendant's constitutional rights to privacy in his home had been violated.

From the foregoing, the Court finds that the Defendant's Motion to Dismiss should be denied and the evidence admitted.

The Court finds that the offense setforth in the complaint charging the Defendant with "Possession of a Controlled Substance with Intent to Deliver, I.C. 37-2732(a)-(1)(B)" has been committed and that there is sufficient cause to believe that the said David Allen Bradley is Guilty thereof, the Court holds that he be held to answer to the same in the District Court. The bond heretofore posted by the Defendant is continued.

IT IS SO ORDERED.

DATED this 5th day of March, 1981.

/s/ Robert W. Bennett - Judge
Sixth District Magistrates Division

Copies to:

Garth S. Pincock
M. Jay Meyers
Bureau of Narcotics
G. Neil Anderson, Clerk of the District Court

By Paula Jenkins
Deputy Clerk

APPENDIX E

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Attorneys for: Defendant

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK MAGISTRATE DIVISION

Case No. _____

STATE OF IDAHO,

Plaintiff,

vs.

DAVID ALLEN BRADLEY,

Defendant.

MOTION TO DISMISS AND TO EXCLUDE

(Filed March 6, 1981)

COMES NOW the above-named Defendant, David Allen Bradley, by and through his counsel, M. Jay Meyers, of the firm of McDevitt, McDevitt, Meyers & White, Pocatello, Idaho, and moves this Honorable Court to suppress all evidence gained or seized by means of a search of the premises at 1158 Freeman Lane, Apartment A, Bannock

County, State of Idaho, on or about the 9th day of January, 1981, for the following reasons:

1. That the search was made upon a warrant without probable cause;

2. That the search was unreasonable;

3. That the warrant was issued without lawful authority;

4. That the search was made by a warrantless, nonconsensual entry into the suspect's home to make a routine felony arrest.

The grounds heretofore enumerated make the search violative of the Fourth Amendment of the United States Constitution, Article I, § 17, of the Idaho Constitution, and Rule 41, I.C.R.

Defendant incorporates by reference the Affidavit for Probable Cause for Search Warrant, signed by Ed Rankin on or about the 9th day of January, 1981, and the Investigation Report attached thereto as Exhibit "A," also signed by E. Rankin.

ORAL ARGUMENT REQUESTED

DATED this 23rd day of January, 1981.

McDevitt, McDevitt, Meyers & White
Attorneys for Defendant

By: /s/ M. Jay Meyers

MOTION TO DISMISS AND TO EXCLUDE (DEFENDANT'S)

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to Dismiss and to Suppress was personally delivered, this 27 day of January, 1981, to the office of Garth S. Pincock, Bannock County Prosecutor, at the Bannock County Courthouse, Pocatello, Idaho 83201.

/s/ M. Jay Meyers